IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.NO.339 of 1992

The Commissioner
H.R. & C.E. Admn. Department
Madras-600 034 .. Appellant/Defendant

-vs-

1. T.M.Pattai Gounder
2. S.N.Govindaswamy
3. Chennimalai Gounder
4. Nachimuthu Gounder
5. Appakutty Gounder
6. C.Nachimuthu Gounder .. Respondents/Plaintiffs

This appeal is filed under Section 70(2) of the Tamil Nadu HR & CE Act 22 of 1959 as amended, praying for the relief as stated therein.

For appellant : : Mr.T.Chandrasekaran
Spl.G.P.(HR & CE)
For respondents: : Mr.A.K.Kumarasamy-R1,3 to R5

JUDGMENT

This appeal has been preferred against the decree and Judgment in O.S.No.36 of 1982 on the file of Sub Court, Dharapuram. The defendant in the suit is the appellant herein.

2. The suit has been filed by the respondents herein to set aside the order passed in Appeal Petition No.54 of 1979(Ex A1) by the Commissioner,Hindu Religious Charitable and Endowment Department, dated 24.12.1981.

3. The short facts of the case of the plaintiff are as follows: The plaintiffs belong to Kongu Vellala Gounder Community in Coimbatore District. There are several sects in the above said Community of Kongu Vellala Gounder. There was no intersect marriage between the said Kongu Vellala Gounder Community. From the time immemorial, each sect is following separate custom and are having separate deity in the temple. The fore fathers of the plaintiffs constructed two temples at Keeranur, one temple is called as "Selvanayagiamman temple" and another is known as "Chellandiamman temple". Six sects in the Kongu Vellala Gounder Community are Athikulam, Kadaikulam, Anthuvakulam, Keeraikulam, Devendrakulam and

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Villaiyakulam. Within the precincts of the above said temple, Karuppasamy Idol is also present. The above said temples were established only by the fore fathers of the above said six sects of Kongu Vellala Gounder Community. Apart from the above said six sects, no one else is entitled to have the right of worship. It is seen from ancient Cadjan leaf document, the said temple was renovated by the fore fathers belonging to the above said six sects of Kongu Vellala Gounder Community. The temple was renovated and Kumbabishakam was performed in the year 1919 and 1972 only by the people belonging to the above said six sects of the above said community. In the year 1972, a Hundial was installed in the temple only to collect the offerings made by the people belonging to the above said six sects. The public was not allowed to make their offerings in the said Hundial. The Hindu Religious Charitable and Endowment had sent a notice to the erstwhile trustee R.K.Nachimuthu Gounder questioning why the departmental trustees cannot be appointed for the above said temple. A suitable reply was sent by the said R.K.Nachimuthu Gounder. The Hindu Religious Charitable and Endowment Board had no locus standi to interfere with the plaintiffs' administration in the temple. The representatives of the six sects of the above said community alone are entitled to maintain the temple as Hereditary Trustees. The plaintiffs along with four persons filed a petition before the Deputy Commissioner of Hindu Religious Charitable and Endowment under Section 63 B of the Tamil Nadu Hindu Religious Charitable and Endowment Act 1959, to declare that the suit temple is a private temple belonging to the plaintiffs and Hindu Religious Charitable and Endowment has no right to interfere with the temple administration of the plaintiffs. The Deputy Commissioner has dismissed the petition. Aggrieved by the orders of the Deputy Commissioner, the plaintiffs have preferred an appeal before the Commissioner under Appeal Petition No.54 of 1979, but the same was also dismissed by the Commissioner. Hence the plaintiffs have preferred the suit in O.S.No.36 of 1982 before the Sub Court, Dharapuram.

4. The defendant in his written statement would contend that the plaintiffs have to prove that plaint schedule temple was constructed and administered by the fore fathers of the plaintiffs and that the plaintiffs are the hereditary trustees of the above said temple. The remedy open to the plaintiffs is to file a petition under Section 64 of the Hindu Religious Charitable and Endowment Act 1959 for appointment of trustees to the temple. The plaintiffs have not produced any document before the Hindu Religious Charitable and Endowment to show that they are the hereditary trustees of the suit temple. The defendant has got every right to appoint a fit person to administer the temple. The plaint schedule temple is a de-notified temple and there is a Hundial available in the temple. The public have right of worship in the temple. The temple belongs to Hindu Community as a whole. The order passed by the Deputy Commissioner and confirmed by the Commissioner will bind the plaintiffs. The suit is barred by limitation. Hence, the suit is liable to be dismissed with costs.

5. On the above pleadings, the learned trial Judge has framed four issues and on the basis of the oral and documentary evidence, has come to a conclusion that the plaintiffs are entitled to the relief asked for in the plaint, consequently decreed the suit without costs, thereby setting aside the order passed by the commissioner in Appeal Petition

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No.54 of 1979 (Ex A1). Aggrieved by the findings of the learned Sub Judge, the defendant has preferred this appeal.

6. Now the point for determination in this appeal is

"Whether the suit temple is a public temple or a private temple exclusively belonging to the six sects of Kongu Vellala Gounder Community of Coimbatore?

7. The Point :

According to the plaintiffs, the plaint schedule property one Sri Arulmigu Selvanayaki Ambal Temple situaute at Keeranur Village, Kangayam Taluk, Erode District belongs to six sects of Kongu Vellala Gounder Community, to which the plaintiffs belong. The plaintiffs have filed a petition before the Deputy Commissioner of Hindu Religious Charitable and Endowment, to declare that the plaintiffs are the hereditary trustees of the plaint schedule temple. The Deputy Commissioner has dismissed the petition filed by the plaintiffs. The appeal preferred against the order of the Deputy Commissioner in A.P.No.54 of 1979 before the Commissioner of Hindu Religious Charitable and Endowment was also dismissed, confirming the order of the deputy Commissioner under Ex A1. Aggrieved by the order passed under Ex A1 by the Commissioner Hindu Religious Charitable Endowment, the plaintiffs have filed O.S.No.36 of 1982 before the Sub Court, Dharapuram for declaration that the plaintiffs are the hereditary trustees of the suit temple and also for setting aside the order passed by the defendant under Ex A1.

8. A reading of Ex A1 order will go to show that there was no dedication of the plaint schedule temple to the public,the Deputy Commissioner has dismissed the claim of the plaintiffs on the ground that there was absolutely no evidence to show the management of the institution as hereditary trustees by the six appellants/plaintiffs. The Commissioner has also confirmed the orders of the Deputy Commissioner under Ex A1 on the ground that the contention of the plaintiffs that the report of the Inspector regarding the nature of the temple was not marked, the claim of the plaintiffs cannot be entertained on the sole ground. To substantiate their contentions, the plaintiffs have produced before the Commissioner cadjan leaf, notice issued by the trustees and the Thiruppani Committee of the year 1984 , Kumbabishakam Invitation issued in March 1975. But those documents were rejected by the Commissioner on the ground that they will not show the hereditary Management of the plaintiffs over the suit temple.

9. The learned counsel appearing for the respondents would contend that before the trial Court, the plaintiffs have produced Ex B2 dated 25.9.1919 executed in favour of Chellappa Gounder and 15 others by Palanichamy Gounder and 15 others conferring the right to maintain and renovate the said temple. Even Ex A1 , it has been clearly stated that the said temple belongs to six sects viz., Athikulam, Kadaikulam, Anthuvakulam, Keeraikulam, Devendrakulam and Villayakulam,the sub Sects of Kongu Vellala Gounder Community to which the plaintiffs belong. EX A3 is the invitation for Kumbabishakam for the suit temple dated 15th Puratasi of Siddarath Andu(1st October 1979). Even in Ex A3, it has been stated that the suit temples belong to six sects viz., Athikulam, Kadaikulam, Anthuvakulam, Keeraikulam, Devendrakulam and Villayakulam Kongu Vellala Gounder of Keeranur Village. Exs A4 to A7 are the photographs of stone

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engraving found within the precincts of the temple. Exs A4 to A7 were marked through P.W.2, who would depose to the fact that those stones inscriptions were found in the suit temple premises.

10. On the side of the defendant, an employee under the Hindu Religious Charitable and Endowment was examined as D.W.1. through whom Exs B1 and B2 were marked. Ex B1 letter dated 21.4.1976 addressed to the Deputy Commissioner of Hindu Religious and Charitable Endowment by the plaintiffs and Ex B2 is the Invitation dated 6.5.1975. Even in Ex B2 invitation , the public have been invited to participate in the festival and no public was asked to make offerings in the suit temple. It is seen from Ex B1 that the fourth plaintiff Nachimuthu Gounder was appointed as the Vice President of the renovation Committee for the suit temple. Except, the evidence of D.W1,there is absolutely no evidence let in by the defendant to show that the suit temple is a public temple and the public have right of worship in the suit temple. No doubt, P.W.1.was admitted that there is a hundial in the precincts of the temple. But P.W.1 has clearly deposed to the fact that the offerings to the hundial were made only by the people belonging to six sects of Kongu Vellala Gounder Community. P.W.1 in his evidence has clearly stated that no other people belonging to other Community were allowed to worship the deity and no other people from public except the people belonging to the above said six sects in Kongu Vellala Gounder Community were allowed to make their offerings in the hundial.

11. The learned counsel appearing for the respondent relying on the decision reported in The Commissioner, Hindu Religious And Charitable Endowment (Administration) Department, Madras-34 v- P.Vellappan Nair(2001-3-L.W.327) and contended that to declare a temple as a public temple,the principles and guidelines to be borne in mind are :-

> (i)there must be an express or imply dedication, the latter being proved by use of the temple by the Hindu Public as of right and without taking any permission from anyone; (ii) So far Tamil Nadu is concerned, there is an initial presumption that the temple is a public one, it being up to the party who claims that it is, private temple, to establish that fact affirmatively. This initial presumption must be rebutted by clinching testimony and the crucial question is as to whether the public worship in the temple as of right;
> (iii) Merely because the members of the public are allowed to attend religious festivals and ceremonies in the temple, it cannot be straight away said that such user was due to an inherent or acquired right of the public to visit the shrine and offer worship. It has been held in the said dictum as follows:
> (iv) The guidelines to enable the courts to decide whether a particular religious institution comes within the scope of the meaning of the definition of a "temple" under Section 6, Clause 20 of the Hindu Religious and Charitable Endowments Act are(a) it should be a place of public worship;(b) There should be acceptable proof of dedication for the benefit of the Hindu Community or a Section; and(c)it should be

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established that the worshippers have long been using as of right the religious institution as a place of Public Religious worship.(v) The existence of Moolasthanam, Mahamandapam, Prakaram, Idols of Chief and other deities, uttasmurthis, daily poojas, special poojas and procession during festive occasions, worship by the local people without hindrance are all factors which give the impression that the temple is a public one; (vi) If there is no dedication of the temple for the benefit of the Hindu Community as of right as a place of public religious worship, if there is no hundial or collection is made for the performance of any festival connected with the temple or for its maintenance, the temple will not be a public temple, but a private temple.(vii) The origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple, are factors to establish whether a temple is a public or a private one.(viii) The essential sine quo non to make a temple public temple appears to be that the public should claim the right to worship the deity installed therein as of right. If the origin of the temple is very well known as a private temple, then the clearest possible evidence is necessary for converting that temple into a public temple. (ix) if the public do not worship the idol as of right and simply because some poojas are performed in a temple and certain members of the public are allowed to participate in the poojas, then the temple would not be said to be a public temple.

12. A Division Bench of this Court in The Commissioner, H.R.& C.E. (Admn) Department, Chennai-vs- Thirukoilur Adhinam Iirupappuliyur Srimath Gnaniar Madalayam by Srilasri Sivashanmugha Arukugha Melgnana Sivachariar Swamigal, represented by the Power of Attorney Agent A. Somasundaram (2003)I.M.L.J.726) have formulated the tests to decide whether the temple is a public or a private as follows:

"Whether the user of the temple by members of the public is of right; whether the control and management vests either in a large body of persons or within the members of the public and the founder does not retain any control over the management; whether the dedication of the properties is made by the founder who retain the control and management and whether the control and management of the temple is also retained by him; and whether the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by the members of the public to the temple, which would be an important intrinsic circumstance to indicate the private nature of the endowment..... The law is quite clear. The fact that

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in a Hindu temple members of the public are allowed to come and offer worship does not on that score alone makes the temple a public temple. The tenets of the Hindu Religion which lay great emphasis on tolerance and sharing do not visualize a worshipper being turned away and refused permission to offer worship. It is, therefore, not the factum of the members of the public being allowed to worship,but whether the worship by such members of the public was as of right, that is crucial for the purposes of deciding, in the light of the other circumstances of a given case, as to whether such a temple is a public temple or a private temple."

13. In T.D.Gopalan-vs The Commissioner of Hindu Religious and Charitable Endowments, Madras(AIR 1972 Supreme Court 1716) the law laid down on this point as follows:

"In Ghoswami Shri Mahalaxmi Vahuji v. Rannchhoddas Kalidas,(1970)2 SCR 275)= (AIR 1970 SC 2025) it was pointed out that the appearance though a relevant circumstance was by no means decisive. The circumstance that the public or a section thereof had been regularly worshipping in the temple as a matter of course and they could take part in the festivals and ceremonies conducted in that temple apparently as a matter of right was a strong piece of evidence to establish its public character. If votive offerings were being made by the public and the expenses were being met by public contribution, it would be safe to presume that the temple was public. In short the origin of the temple, the manner in which its affairs were managed, the nature and extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple were factors that went to establish whether a temple was public or private".

14. The learned Special Government Pleader(H.R & C.E.) appearing for the appellant would contend that admittedly, there is a hundial in the precincts of the suit temple and hence it is to be presumed that the temple belongs to the public. The mere presumption that the hundial is in the precincts of the suit temple will not derive us to the conclusion that it is a public temple. There is absolutely no evidence on record to show that the public were allowed to place their offerings into the hundial, which is kept in the suit temple and the public have a right of worship in the suit temple. P.W.1 also admits that there is a hundial in the temple but the offerings to the hundial were made only by the members of six sects of Kongu Vellala Gounder Community to which plaintiffs belong and no one else from the public were allowed to put their offerings in the said hundial. Even in Exs B1 and B2, relied on by the defendant, there is no demand from the public to contribute money to celebrate the festival of the suit temple. The learned Sub Judge, after considering all those aspects, has come to a correct conclusion that the suit temple is a

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private temple belonging to six sects of Kongu Vellala Gounder Community to which plaintiffs belong and that the temple belongs to the plaintiffs and Ex A1 order of the Deputy Commissioner dated 24.12.1981 is liable to be set aside. I find no reason to interfere with the well considered order of the learned Sub Judge, Dharapuram in O.s. No.36 of 1982 which is neither illegal nor infirm. The point is answered accordingly.

15) In fine, this appeal is dismissed confirming the decree and Judgment in O.S.No.36 of 1982 on the file of Sub Court, Dharapuram. Considering the facts and circumstances of the case, there is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Sub Judge,
Dharapuram(with records)

2. The Section Officer,
V.R.Section, High Court, Madras.

1 cc To The Government Pleader, SR.49484.
1 cc To Mr.A.K.Kumarasamy, Advocate, SR.49275.

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